$12.32 wages at the time of his discharge. Plaintiff sued and recovered $500 under a statute providing that wages should be paid by certain employers at specified times, and exacting an additional payment of ten per cent of the amount due for each day's default. (1913 MICHIGAN PUBLIC ACTS, Act 59: 1915 MICHIGAN COMPILED LAWS, §§ 5583–5586.) Defendant appeals on the ground that the statute violates the United States and Michigan constitutions, in denying equal protection of the laws, and in taking property without due process of law. *Held*, that the statute is unconstitutional. *Davidow* v. *Wadsworth Manufacturing Co.*, 53 Chicago Legal News, 98 (Mich.).

The court concerns itself chiefly with the argument that the statute discriminates between employers, and thus denies to those included the equal protection of the laws. On this ground the decision is supportable. A more interesting question is whether the imposition of the penalty is a denial of due process. More or less similar penalties have been upheld. *Missouri P. R. Co.* v. *Humes*, 115 U. S. 512; *Minneapolis & St. L. R. Co.* v. *Beckwith*, 129 U. S. 26; *Fidelity Mutual Life Ass.* v. *Mettler*, 185 U. S. 308; *Farmers' & Merchants' Ins. Co.* v. *Dobney*, 189 U. S. 301; *Seaboard A. L. R.* v. *Seegers*, 207 U. S. 73; *Yazoo & M. R. Co.* v. *Jackson Vinegar Co.*, 226 U. S. 217; *Kansas C. S. R. Co.* v. *Anderson*, 233 U. S. 325; *Skinner* v. *Garnett Gold-Mining Co.*, 96 Fed. 735; *Farrell* v. *Atlantic C. L. R. Co.*, 82 S. C. 410, 64 S. E. 226; *Phillips* v. *Missouri P. R. Co.*, 86 Mo. 540; *Houston & T. C. R. Co.* v. *Harry*, 63 Tex. 256. Where penalties have been declared unconstitutional, the *ratio decidendi* has usually been discrimination. *Gulf, C. & S. F. R. Co.* v. *Ellis*, 165 U. S. 150; *Atchison, T. & S. F. R. Co.* v. *Vosburg*, 238 U. S. 56; *Wilder* v. *Chicago & W. M. R. Co.*, 70 Mich. 382, 38 N. W. 289. But some cases turn, at least in part, on denial of due process. *Atchison & N. R. Co.* v. *Baty*, 6 Nebr. 37; *San Antonio & A. P. R. Co.* v. *Wilson*, 19 S. W. 910 (Tex. App.). Whether or not the mere size of a penalty otherwise constitutional may bring it within the constitutional prohibition has not been decided, though there are intimations to that effect. See *Southwestern T. & T. Co.* v. *Danaher*, 238 U. S. 482; *Seaboard A. L. R.* v. *Seegers*, *supra*, 78–79; *Waters-Pierce Oil Co.* v. *State of Texas*, 212 U. S. 86, 111. Statutes are unconstitutional if the size o the penalty indirectly coerces one to forego testing the validity of the statute. *Missouri P. R. Co.* v. *Tucker*, 230 U. S. 340. But such cases are not authority for holding that size alone, where it has no such effect, may make a penalty unconstitutional. The application of the Fourteenth Amendment is largely a matter of practical judgment; and a slight variation of fact may cause the court to distinguish cases seemingly alike. Compare *Gulf, C. & S. F. R. Co.* v. *Ellis*, *supra*, and *Fidelity Mutual Life Ass.* v. *Mettler*, *supra*. It is impossible to argue authoritatively from precedent, which is useful only as a guide. See COLLINS, THE FOURTEENTH AMENDMENT AND THE STATES, 118.

CONSTITUTIONAL LAW — EIGHTEENTH AMENDMENT — EFFECT ON PRIOR EXISTING STATE LEGISLATION. — After the Eighteenth Amendment went into effect, defendant was convicted under a pre-existing state statute of selling liquor without a license. Defendant appealed on the ground that the state law is no longer enforceable. *Held*, that the conviction be affirmed. *Commonwealth* v. *Nickerson*, 128 N. E. 273 (Mass.).

Defendants were arrested for having liquor in their possession in violation of a Florida statute. The defendants applied for a writ of *habeas corpus*. *Held*, that the prisoners be remanded. *Ex parte Ramsey*, 265 Fed. 950.

For a discussion of these cases, see NOTES, p. 317, *supra*.

CONTRACTS — DEFENSES: IMPOSSIBILITY — CHANGE IN FOREIGN LAW. — The defendants chartered a ship from a Spanish company to carry cargo from Calcutta to Barcelona, payment to be made in Spain upon arrival of the goods.

The defendants were an English company and the contract was made in England. Subsequent to the making of the contract the Spanish government issued a decree fixing the freight rate at a much lower price than that stipulated in the contract. The cargo was delivered in Barcelona, but the defendants refused to pay more than the legal rate. *Held*, that the plaintiff cannot recover. *Ralli Bros.* v. *Compañia Naviera Sota y Aznar*, [1920] 2 K. B. 287.

For a discussion of the principles involved in this case, see NOTES, *supra*, p. 319.

CONTRACTS — DIVISIBLE CONTRACTS — BUYER'S FAILURE TO PAY AS EXCUSE FOR SELLER'S NON-PERFORMANCE. — The plaintiff contracted to deliver goods to the defendant, on 30 days' credit, in certain instalments, January, February, and "after March 1st." He shipped none until February and made intermittent partial deliveries until June. The defendant accepted all partial deliveries, paying for the first two only and finally refusing to pay anything further unless the plaintiff recognize his claim for damages and give assurance of future shipments. The plaintiff "rescinded" the contract and sued for the price of the goods accepted. The defendant admitted this liability but counterclaimed for damages for the plaintiff's failure to deliver goods as per contract. *Held*, that the counterclaim for goods due before "rescission" be allowed. *Goodyear Tire & R. Co.* v. *Vulcanized P. Co.*, 228 N. Y. 118, 126 N. E. 711.

A continued nonpayment by the buyer under an instalment contract, constituting a material breach, justifies the seller's refusal to perform further. *Kokomo Strawboard Co.* v. *Inman*, 134 N. Y. 92, 31 N. E. 248; *Jensen* v. *Goss*, 28 Cal. App. Dec. 135, 179 Pac. 225. It is immaterial that the seller owes an equivalent or greater amount of damages for prior breach on his part. *J. K. Armsby Co.* v. *Grays Harbor Commercial Co.*, 62 Ore. 173, 123 Pac. 32; *Standard Coal Co.* v. *Eclipse Coal Co.*, 102 S. E. 137 (Ga.). *Contra*, *Sperry, etc. Co.* v. *O'Neill-Adams Co.*, 185 Fed. 231. See 2 WILLISTON, CONTRACTS, §§ 859, 867. Moreover a refusal to pay except on some condition which the buyer has no right to impose has the same effect. *Stephenson* v. *Cady*, 117 Mass. 6; *Munroe* v. *Trenton, etc. Co.*, 206 Fed. 456. But see *Hjorth* v. *Albert Lea Mach. Co.*, 172 N. W. 488 (Minn.). The demand that the seller recognize the buyer's claim for damages is such an unjustifiable condition. *Harber Bros. Co.* v. *Moffat Cycle Co.*, 151 Ill. 84, 37 N. E. 676; *Nat'l Contracting Co.* v. *Vulcanite Portland Cement Co.*, 192 Mass. 247, 78 N. E. 414. The buyer's conduct in the principal case thus justified the seller's absolute refusal to proceed. But the failure to deliver the January and February instalments preceded any breach by the buyer who has therefore a right to damages. This is not waived by mere acceptance of the partial, late deliveries. *Hall* v. *New Hartford Canning Co.*, 153 App. Div. 562, 138 N. Y. Supp. 866; *Wisconsin Lumber Co.* v. *Pacific Tank Co.*, 76 Wash. 452, 136 Pac. 691. But see *Mason* v. *Valentine Co.*, 180 App. Div. 823, 168 N. Y. Supp. 159. Thus far the case may be supported. The first default in payment by the buyer, however, gave the seller the right to suspend further deliveries. *Raabe* v. *Squier*, 148 N. Y. 81, 42 N. E. 516; *Ackerman* v. *Santa Rosa-Vallejo Tanning Co.*, 257 Fed. 369. Hence the reasoning of the court in allowing damages for the seller's defective performance between this time and the misnamed "rescission" is unacceptable, contrary to authority, and to prior New York decisions. *Gardner* v. *Clark*, 21 N. Y. 399; *American Broom & Brush Co.* v. *Addikes*, 19 Misc. 36, 42 N. Y. Supp. 871.

CORPORATIONS — STOCKHOLDERS — CONSTRUCTION OF STATUTE INVOLVING LIABILITY OF STOCKHOLDERS FOR TORTS. — A statute provided that a stockholder should be personally liable to the extent of the amount unpaid on his stock for the "debts" of a corporation. 1919 SO. DAK. REV. CODE, § 8779.